

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE

v.

EDWARD B. STEWART, III

Defendant.

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Case No.: 0511010566

Cr.A. No.: 05-12-0469

STATE OF DELAWARE

v.

FLOYD L. TAYLOR

Defendant.

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Case No.: 0511010568

Cr.A.No.: 05-12-0103

Submitted: April 5, 2006

Decided: May 1, 2006

Stephen Smith, Esquire
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Mr. Floyd L. Taylor, III
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Pro Se

DECISION AFTER TRIAL

Defendant Edward B. Stewart, III (“Stewart”) has been charged with attempt to purchase, buy or give alcoholic liquor to a person under 21, in violation of Title 11, §531 of the *Delaware Code*.¹ Defendant Floyd F. Taylor, III (“Taylor”) has been charged with attempted underage possession/consumption of alcohol in violation of Title 11, §531 of the *Delaware Code*.²

At the trial for these defendants, an issue arose as to whether the defendants could be found guilty of the attempt charges against them given the nature of the charges upon which the attempt charges are based. I find that Stewart was actually charged under the wrong statute. The appropriate charge for Stewart is the purchasing or buying of alcoholic liquor for a person under the age of twenty-one years in violation of 4 *Del. C.* §904(c). Since the elements alleged by the State in the Information against Stewart for this case satisfied 4 *Del. C.* §904(c), Stewart had notice of the factual and legal basis for the charge against him and I find him guilty of that charge. I also find that an attempt charge can be based on the offense of underage possession or consumption of alcohol in violation of 4 *Del. C.* §904(f). Therefore, I find Taylor guilty of that attempt charge.

FACTS

Taylor drove Stewart to a liquor store located in Kent County, Delaware, with the agreement that Stewart, who is old enough to legally purchase alcoholic beverages, would purchase a six pack of an alcoholic beverage for Taylor, who was nineteen years

¹ The criminal offense of purchasing, buying or giving alcoholic liquor for or to a person under 21 can be found in Title 4, §904(c) of the *Delaware Code*.

² The criminal offense of underage possession or consumption of alcoholic liquor can be found in Title 4, §904(f) of the *Delaware Code*.

old at the time. Taylor wanted Stewart to purchase the six-pack for him so that he could give it to a third party. Stewart entered the store by himself and purchased two six-packs of an alcoholic beverage, one six-pack for himself and one for Taylor. When he exited the store and approached the vehicle being driven by Taylor, he was approached by local police who were conducting surveillance of the store. He and Taylor were eventually arrested. Stewart was charged with the attempt to purchase, buy or give alcoholic liquor for or to a person under 21 years of age in violation of 11 *Del. C.* §531. Taylor has been charged with attempted underage possession or consumption of alcohol in violation of the same section.

DISCUSSION

a. Stewart's Case

It is clear on the record that Stewart is guilty of purchasing or buying alcoholic liquor for a person under twenty-one years of age in violation of Title 4, §904(c) of the *Delaware Code*. In pertinent part, §904(c) states that anyone who “purchases, buys or gives alcoholic liquor for or to a person under the age of twenty-one years” is guilty of that section. When Stewart entered the liquor store by himself and purchased a six pack of an alcoholic beverage for Taylor, he was in obvious violation of §904(c). The fact that the State in its Information against Stewart characterizes its charge against him as an attempt charge does not dismiss the fact that Stewart had notice of the factual and legal basis for the charge against him regardless of the mischaracterization. The Information indicates that the attempt was “in violation of Title 4, §904(c) of the *Delaware Code*”. It also states that Stewart “did enter and exit a package store purchasing alcohol, in an

attempt to provide the alcohol to Floyd Lee Taylor, who is under the age of twenty-one”. The error in the characterization of the charge did not mislead Stewart to his prejudice. Thus, it is not grounds for dismissal and the charge must be conformed to the evidence. Therefore, I find Stewart guilty of purchasing or buying alcoholic liquor for a person under the age of twenty-one years in violation of §904(c) of Title 4 of the *Delaware Code*.

b. Taylor’s Case

The only issue the Court needs to consider in Taylor’s case is whether an attempt charge can be based on a charge of underage possession or consumption of alcohol, in violation of 4 *Del. C.* §904(f). While I have found no Delaware case directly on point, it is clear that an attempt charge can be based on such an offense.³

Section 531(2) of Title 11 of the *Delaware Code* states, in pertinent part, that “[a] person is guilty of an attempt to commit a crime if the person. . .[i]ntentionally does. . . anything which, under the circumstances as the person believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of the crime by the person”. Under Delaware law, the offense of criminal attempt contains two elements: (1) the purpose to commit the target offense; and (2) conduct constituting a “substantial step” toward the commission of the target offense. *Gronenthal v. State*, 779 A.2d 876, 881 (Del. 2001).

³ At trial, there was a discussion as to whether an attempt charge can be based on a strict liability criminal offense. While not making a determination as to whether the underage possession or consumption of alcohol is a strict liability offense, it is clear that an attempt to commit a strict liability criminal offense is possible “if it is shown that the defendant acted with an intent to bring about the proscribed result.” Wayne R. LaFare & Austin W. Scott, Jr., *Substantive Criminal Law* Vol. 2, §6.2, 28 (West 1986).

It is clear to the Court that the State has met its burden of proving the attempt charge against Taylor beyond a reasonable doubt. With respect to the first element, a person cannot be found guilty of the offense of attempt to commit a criminal offense unless it was his or her purpose, i.e., his or her conscious object, to engage in the conduct or to cause the result that would constitute the substantive offense. For the offense involved here, the attempt by Taylor to possess or consume alcoholic liquor by someone under 21 years of age, all that is necessary is that the State prove that Taylor intended to obtain the possession of alcoholic liquor. The State has met its burden of proving this element of the offense.

As to the second element of the charge of criminal attempt, the State must show that Taylor engaged in conduct constituting a “substantial step” towards the commission of the target offense. “Substantial step” is defined under 11 *Del. C.* §532 as “an act or omission which leaves no reasonable doubt as to the defendant’s intention to commit the crime which the defendant is charged with attempting”. The finding of whether a “substantial step” toward the commission of an offense has occurred is a question for the finder of fact. *Gronenthal* at 881. Again, given the facts as found by the Court in this case, the State has met its burden of proving a “substantial step” toward the commission of the target offense of underage possession of alcoholic liquor by Taylor as he drove Stewart to a liquor store so that Stewart could purchase alcoholic beverages for him and sent Stewart into the store with instructions to purchase the beverages.

CONCLUSION

Stewart was actually charged under the wrong statute. The appropriate charge for Stewart is the purchasing or buying of alcoholic liquor for a person under the age of twenty-one years in violation of 4 *Del. C.* §904(c). Since the elements alleged by the State in the Information against Stewart satisfied 4 *Del. C.* §904(c), Stewart had notice of the factual and legal basis for the charge against him and I find him guilty of that charge. I also find that an attempt charge can be based on the offense of underage possession or consumption of alcohol in violation of 4 *Del. C.* §904(f). Therefore, I find Taylor guilty of attempted underage possession/consumption of alcohol in violation of 11 *Del. C.* §531.

IT IS SO ORDERED THIS 1ST DAY OF MAY, 2006.

CHARLES W. WELCH
JUDGE